IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 125 OF 2003.

Shri Yogesh Dhadellu,
r/o Ace Residency,
Aquem, Behind St. Joseph
High School, Margao. ... Applicant.

Versus

State through Cuncolim
Police Station represented
by Public Prosecutor. ... Respondent.

Mr. Nitin Sardessai, Advocate for the Applicant.

Mrs. W. Coutinho, Additional Public Prosecutor for the Respondent/State.

Coram : P.V. HARDAS, J.

Date : 24th July 2003.

ORAL JUDGMENT.

This application under Section 482 of the Code of Criminal Procedure raises an important and an interesting question regarding the exercise of jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to order the release of an approver, who is behind bars, being not entitled to be released on bail.

2. A brief reference to the facts as are germane for the decision of this application are stated hereunder:-

The applicant was original accused no. 2 in the charge-sheet which was filed in respect of offences

punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, on the allegations that between 30th September and 1st October 2000, the applicant alongwith the other accused committed the murder of Bassavraj Patil and Shidhlingappa Patil. After the filing of the charge-sheet, the applicant was tendered pardon on his willingness to make full and true disclosure. By Order, dated 5th February 2001, the Chief Judicial Magistrate, Margao, tendered pardon to the applicant and in pursuance to the pardon tendered to the applicant, the statement of the applicant came to be recorded. After committal to the Court of Sessions, the applicant was examined as a prosecution witness and no grievance was made by the prosecution that the applicant had not made a full and true disclosure of the facts relating to the incident. The applicant, since the date of his arrest, is behind bars. In the charge-sheet, the prosecution has cited 32 witnesses and, till the date of the filing of this application, only about 3 witnesses have been examined.

3. On account of his continued incarceration, despite the fact that he has deposed in favour of the prosecution, the applicant was constraint to file an application for bail before the learned Sessions Judge, at Margao. The learned Sessions Judge, after referring to Section 306(4)(b) of the Code of Criminal Procedure,

rightly came to the conclusion that the applicant was not entitled to be released on bail. The object, in case the approver is not on bail, in detaining him in custody till the conclusion of the trial, which has been succinctly summarized by the learned Sessions Judge, Margao, is not to punish the accused for having agreed to give evidence for the State, but, the object is to protect him from the wrath of his comrades, whom he has chosen to expose. The other object in detaining the approver is to wean him from the temptation of saving his erstwhile friends and companions. The Sessions Judge, therefore, by his Order, dated 31st March 2003, rightly rejected the bail application of the applicant/accused.

4. Mr. Sardessai, the learned counsel appearing on behalf of the applicant, has urged before me that Section 306(4)(b) carves out two classifications, namely, (1) classification of the approver, who is already on bail and (2) classification of approver, who is not on bail. He has submitted that if the above object is to protect the approver from the wrath of his fellow accused, there is no rationale behind permitting the approver, who is already on bail, to be free. He, thus, submits that the classification is totally unreasonable and discriminatory and the detention of the approver till the conclusion of the trial is violative

of Article 21 of the Constitution of India. He has next urged before me that the High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, can order the release of the approver, though the approver is not entitled to be released on bail, in a case where the High Court finds that the approver has been examined as a witness and has faithfully deposed by disclosing the true facts and has not breached the condition of pardon. In support of this, strong reliance is placed by the learned counsel for the applicant on the Full Bench Decisions of the Delhi High Court and the Rajasthan High Court.

5. The Division Bench of the Punjab High Court in **A.L. Mehra v. the State**, A.I.R. 1958 Punjab 72 has held in paragraph 17 that it was an eminently fit case, on account of delay in concluding the trial, in which the inherent powers of the Court to prevent the abuse of the process of the Court be exercised in favour of a person, who has been in confinement for several months and who was recently released on parole. The learned Judges, therefore, directed that the approver shall be released on bail on furnishing security to the satisfaction of the District Magistrate.

6. The Full Bench of the Rajasthan High Court in **Noor Taki @ Mammu v. State of Rajasthan**, 1986 CRI.L.J.

1488 has held as follows:-

> " According to S. 306(4)(b) the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases the High Court has power under S. 482, to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise outlive the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Art. 21 of the Constitution. Detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount to violation of Art. 21 of the Constitution. Reasonable expeditious trial is warranted by the provisions of the Cri.P.C. and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, the High Court has always power to declare his detention either illegal or enlarge him on bail while exercising its inherent powers."

7. The Full Bench of the Delhi High Court in **Prem Chand v. State,** 1985 CRI.L.J. 1534 has held thus:-

> " Where the approver's evidence has already been recorded, and no useful purpose was being served in his further detention in jail and the administration of justice was not in any manner likely to be affected by his release and there was no reason to suppose that the machinery of law would not be able to give protection to the approver in case any adventurism was sought to be displayed by his confederates, or their supporters and the conduct of the approver in seeking his release itself shows that he carries no

> apprehensions, it would not be correct for the Court to still create such fears and profess to provide him unsolicited protection by detaining him in jail for indefinite period."

8. In the present case, the applicant was arrested on 10th December 2000. The learned Additional Sessions Judge had framed a charge by his Order, dated 1st November 2001. The applicant was examined on 18th July 2002 and his evidence was completed on 27th March 2003. In the charge-sheet about 32 witnesses are cited. All the accused are stated to be in judicial custody. On the basis of the pace at which the trial has been proceeding, it can be reasonably concluded that the trial is not likely to be concluded immediately in the near future. The applicant is said to be a resident of Pune and, since all the accused are in judicial custody, releasing of the applicant on bond would not endanger his safety. The object, therefore, in denying bail to an approver, who is already in custody, would not be frustrated. This is a case of peculiar hardship, where the applicant being in custody for nearly two and half years, has been tendered pardon and has deposed as a witness in favour of the prosecution, would continue to remain in custody for a considerable length of time. Therefore, according to me, relying on the Full Bench Judgments of the Rajasthan and Delhi High Courts, this Court, while exercising powers under Section 482 of the Code of Criminal Procedure, in the peculiar facts of this case, can order release of the applicant on the

applicant executing a bond to appear before the Court, as and when directed to, by the Court. The submission of the learned counsel for the applicant is not without merit when he submits that, since the applicant is a permanent resident of Pune, his release would not jeopardise his safety.

9. After giving my anxious consideration to the rival submissions, according to me the application deserves to be allowed and the applicant be released on his executing a bond.

10. Criminal Miscellaneous Application is, accordingly allowed. The applicant be released forthwith, if not wanted in any other case on the following terms and conditions:-

(1) The applicant to execute a personal bond in the sum of Rs. 10,000/- to ensure that he attends the trial Court as and when called upon by the learned trial Court.

(2) The applicant, who is stated to be a permanent resident of Pune, shall reside at Pune till the decision of the Sessions Case No. 12 of 2001.

(3) The applicant shall furnish the permanent

address of his residence at Pune to the learned trial Court and, in case of any change of address, shall intimate the same to the learned trial Court.

(4) The applicant shall sign an undertaking to the learned trial Court that he shall attend the case as and when called upon by the learned trial Court.

(P.V. HARDAS)
JUDGE.

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